

PLACID OIL CO.

IBLA 79-19          Decided November 20, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 45448.

Affirmed.

1.      Oil and Gas Leases: Reinstatements

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. A number of factors caused by appellant's inadvertence, negligence, or lack of communication with its assignor, which combined to cause late payment of the rental do not justify failure to make timely payment.

APPEARANCES: James C. Hoskins II, Esq., for Placid Oil Company.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Placid Oil Company appeals from a decision dated September 7, 1978, of the Wyoming State Office, Bureau of Land Management (BLM), denying its petition for reinstatement of oil and gas lease W 45448.

Rental on this lease, in the amount of \$1,232 was due on or before August 1, 1978, but was not delivered to, and received by BLM until August 18.

The lease was originally held by Discovery Oil, Ltd., and a 50 percent interest therein was assigned to appellant by an assignment executed on May 5, 1978. The assignment was approved by BLM on July 20, effective as of July 1.

On August 21, BLM sent appellant a termination notice, advising that the lease had terminated on the anniversary date for failure to timely pay the rental.

Appellant's petition for reinstatement was filed on September 1, 1978. Therein, appellant stated inter alia:

Therefore, Placid Oil Company would respectfully aver and show that the failure of it, as assignee of Federal Lease No. W-45448, to pay the required rental payment when due was justifiable and not due to lack of reasonable diligence but was due solely and proximately to a lapse in bookkeeping and control which lapse was due to the occurrence of the assignment of the lease and to the delays ordinarily occasioned by the transfer of documents between offices through the mail.

The decision found that neither reasonable diligence in payment nor a justifiable reason for late payment had been shown and therefore denied the petition for reinstatement.

Appellant asserts on appeal that it was advised by BLM as late as August 17, that the payment had been timely made. In the petition for reinstatement, however, appellant states that one of its employees "reasonably inferred" this fact from a conversation with BLM employees. Appellant contends that it acted with reasonable diligence in delivering payment upon discovery that payment had not been made by its assignor, Discovery Oil, Ltd.

Appellant further points out that it has been engaged in the oil business since 1936 and has never previously failed to make a rental payment. Quoting from the dissent in Phillips Petroleum Company 29 IBLA 114 (1977), appellant suggests that it may be entitled to equitable relief.

[1] An oil and gas lease terminated for failure to pay annual rental on or before the anniversary date may be reinstated only if the failure to pay timely was either justifiable or not due to a lack of reasonable diligence, 30 U.S.C. § 188(c) (1976). Making the payment after it is due does not constitute reasonable diligence. Gilbert Mark Castillo, 36 IBLA 32 (1978); Apostolos Paliombeis, 30 IBLA 153 (1977). Appellant concedes in its petition for reinstatement that the failure to make payment was due to its own inadvertence. Its communications with its assignor were incomplete and it mistakenly believed payment had been made. These factors indicate an absence of the required reasonable diligence on appellant's part. The fact that appellant has a history of making timely payments does not establish reasonable diligence in this case. Phillips Petroleum Company, supra.

Failure to pay rental timely is justifiable only when it is caused by factors outside the lessee's control, which were the proximate cause of such failure. The present record reveals no such factors and appellant's advertence to the dissent in Phillips Petroleum Company, supra, is inapposite. The dissent there is akin to that in Lone Star Producing Company, 28 IBLA 132 (1976), which appellant also cites. The majority in that case stated with respect thereto:

The dissenting opinion quotes at length from the legislative history of the Act of May 12, 1970, 84 Stat. 206. The points raised in the dissent have been fully considered earlier by this Board and rejected in Louis Samuel, 8 IBLA 268 (1972), and in Louis J. Patla, 10 IBLA 127 (1973). The principles which the dissent attacks have been consistently reaffirmed by this Board, and in many cases, by the federal courts. See, e.g., Maisano v. Morton, Civil No. 39720 (E.D. Mich. 1973); Samuel v. Morton, Civil No. CV-74-1112-EC (C.D. Cal. 1974); Goad v. Morton, Civil No. 9948 (D. N.M. 1974); Laatz v. Morton, Civil No. 03266 (E.D. Mich. 1975).

We adhere to the view that the type of reasons offered here are not within the ambit of the reinstatement provisions.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

